

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAIME VALENTIN,	:	
	:	
Petitioner,	:	
	:	
v.	:	CIVIL ACTION
	:	NO. 06-1426
	:	
UNITED STATES OF AMERICA,	:	(Criminal Case No.: 03-0355-1)
	:	
Respondent.	:	

MEMORANDUM AND ORDER

Tucker, J.

May ___, 2007

Presently before the Court is *pro se* Petitioner Jaime Valentin's Habeas Corpus Motion to Vacate/Set Aside/Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 132 of criminal case no. 03-0355-1). For the reasons set forth below and upon consideration of the parties' arguments, the entire record and the applicable law, the Court finds that Petitioner's Habeas Motion should be **DENIED**.

BACKGROUND

On July 10, 2003, Petitioner Jaime Valentin was charged by 24-count second superseding indictment with conspiracy to interfere with interstate commerce by threats or violence; interference with interstate commerce by robbery, and aiding and abetting; carrying and using a firearm during a crime of violence, and aiding and abetting; and possession of ammunition by a convicted felon. The indictment arose from his participation in eleven armed robberies from December 2002 to January 2003 in Philadelphia.

On August 10, 2004, Petitioner entered guilty pleas to counts one, two, three, six and seven of the Second Superseding Indictment, pursuant to a cooperation plea agreement with the government. According to the plea agreement, Petitioner agreed that if the government made a motion to allow the court to depart downward pursuant to U.S.S.G. § 5K1.1 and Title 18 U.S.C. § 3553(e), a sentence of not less than 20 years imprisonment would be the appropriate disposition of the criminal matter. Petitioner further agreed, pursuant to the plea agreement, that he would neither appeal nor present any collateral challenge to his conviction or sentence, except under limited circumstances. Specifically, under the appellate waiver provision, Petitioner maintained the right to appeal if the government appealed. Further, Petitioner maintained the right to file a direct appeal only if his sentence exceeded the statutory maximum or if the Court departed upward from the applicable sentencing guidelines.

At the guilty plea colloquy on August 10, 2004, this Court reviewed the plea agreement, including the appellate waiver, with Petitioner to ensure he entered into the plea knowingly, intelligently and willingly. Indeed, during the colloquy, this Court specifically stated to Petitioner that under the terms of the guilty plea agreement, Petitioner has limited his rights to appeal. After a review of the appellate waiver provision by the Government and this Court, Petitioner stated that he understood what appellate rights he was waiving by agreeing to the guilty plea agreement.

On May 2, 2005, this Court imposed a sentence of 240 months imprisonment, which is below the statutory maximum of life imprisonment and was not the result of an erroneous upward departure. At the sentencing and in the sentencing memoranda, Petitioner's then counsel focused on Valentin's personal history, family tragedy and his drug addiction when arguing that

the Court should impose the minimum agreed potential sentence of 240 months rather than the statutory maximum.

DISCUSSION

I. Appellate Waiver

When analyzing the validity of waiver provisions, courts treat waivers of appeal and waivers of collateral attack alike. Jackson v. United States, No. 06-4698, 2007 WL 656685, at *3 (E.D. Pa. Feb. 26, 2007). In the Third Circuit, “waivers of appeals in plea agreements are generally enforceable.” United States v. Fagan, 2004 WL 2577553, *3 (E.D. Pa. Oct. 4, 2004). Indeed, the Third Circuit has stated in United States v. Khattak, 273 F.3d 557 (3d Cir. 2001), that “waivers of appeals are generally permissible if entered into knowingly and voluntarily,” unless there is “an unusual circumstance where an error amounting to a miscarriage of justice may invalidate the waiver.” Id. at 558, 562 (citing United States v. Teeter, 257 F.3d 14, 25 (1st Cir. 2001)). Accordingly, waivers of appeals should be strictly construed. Id. at 562.

Here, it is clear that Petitioner entered into the appellate waiver knowingly and voluntarily.¹ At the guilty plea colloquy, the Court and Government reviewed the terms of the agreement with Petitioner. The Court specifically addressed the appellate waiver provision of the agreement with Petitioner. (8/10/04 Hr’g Tr. at 14-15). Petitioner informed the Court that he was aware of and understood the limitations that the guilty plea agreement placed on his right to appeal or collaterally attack his sentence. (Id.). Further, there are no unusual circumstances or any error amounting to a miscarriage of justice that would invalidate the appellate waiver in this

¹ The Court also notes that Petitioner does not contend that his appellate waiver was unknowing or involuntary. Indeed, Petitioner does not address the issue of appellate waiver in his lengthy motion.

case.

Further, the limited exceptions to the appellate waiver are not present here. The Court imposed a sentence well below the applicable guideline range and did not departed upward from the applicable sentencing guidelines. Additionally, the government has not initiated this appeal.

Accordingly, this Court finds that the appellate waiver agreed to by Petitioner requires that the Court deny the motion at bar.

II. Ineffective Assistance of Counsel

“‘[A]n ineffective assistance of counsel argument survives a waiver of appeal only when the claimed assistance directly affected the validity of that waiver or the plea itself.’” Jackson v. United States, No. 06-4698, 2007 WL 656685 (E.D. Pa. Feb. 26, 2007) (quoting United States v. White, 307 F.3d 336, 343 (5th Cir. 2002)); see also United States v. Robinson, 2004 WL 1169112, *3 (E.D. Pa. Apr.30, 2004)). However, “[t]he benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the [outcome] cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984). The two-pronged Strickland test requires the defendant to show not only that counsel’s performance was deficient, but also that “such deficient performance prejudiced the defense.” Id. at 687. In order to prove deficiency of counsel, defendant must show that “counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment.” Id. Furthermore, defendant must prove that counsel’s performance prejudiced the defense by illustrating that “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. Additionally, a defendant must show that “there is a reasonable probability that,

but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 694. If Petitioner does not satisfy either prong of the test, his claim for ineffective assistance of counsel fails, making a determination on the remaining prong unnecessary. Id. at 697.

As an initial matter, the Court notes that Petitioner does not argue that an ineffective assistance of counsel directly affects the validity of Petitioner's appellate waiver. Instead, Petitioner simply argues that an ineffective assistance of counsel resulted in an “over-sentencing.” (Doc. 132 at 26-34). Petitioner's ineffective assistance of counsel argument, however, is unavailing.

Petitioner has failed to show that his counsel's performance was in any way deficient or that such allegedly deficient performance prejudiced his defense. Indeed, the examples Petitioner cites to show a deficiency are not even supported by the record. For instance, Petitioner claims that his attorney failed to inform the Court about Petitioner's mental health issues and drug addiction. The record, however, shows otherwise. Petitioner's counsel not only addressed these issues with the Court in pre-trial submissions and expert testimony, but also highlighted these concerns again during the May 2, 2005 sentencing hearing. (Doc. 111 and 5/5/2005 Hr'g Tr. at 10-19).

Accordingly, the Court finds that Petitioner has not shown an ineffective assistance of counsel sufficient to invalidate the appellate waiver provision of his plea agreement.

CONCLUSION

The Court finds that Petitioner knowingly and voluntarily agreed to the waiver provision in his plea agreement, and that enforcing this appellate waiver would not cause a miscarriage of justice. Further, Petitioner's ineffective assistance of counsel argument is wholly without merit. Petitioner's waiver, therefore, forecloses the instant Motion.

Accordingly, the Court concludes that *pro se* Petitioner's Habeas Motion to Vacate/Set Aside/Correct Sentence Pursuant to 28 U.S.C. § 2255 is denied.²

An appropriate Order follows.

² In the alternative, even if the appellate waiver did not foreclose the instant Motion, this Court denies Petitioner's Motion with prejudice because his arguments are meritless. In addition to his ineffective assistance of counsel argument, Petitioner also argues that (1) his sentence was in "gross violation" of Due Process; (2) he is innocent; (3) this Court lacked jurisdiction to sentence him; and (4) his prior convictions should not have been included in his sentence calculations. The Court, however, finds that Petitioner has failed to make a substantial showing of a denial of any constitutional rights.

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UNITED STATES OF AMERICA,	:	(Criminal Case No.: 03-0355-1)
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ORDER

AND NOW, on this ____ day of May 2007, upon careful consideration of the pleadings and record herein, and after review of the *pro se* Petitioner's Habeas Corpus Motion to Vacate/Set Aside/Correct Sentence Pursuant to 28 U.S.C. § 2255 (Doc. 132 of criminal case no. 03-0355-1) and Respondent's Response (Doc. 142), **IT IS HEREBY ORDERED AND DECREED** that *pro se* Petitioner's Habeas Motion, pursuant to 28 U.S.C. § 2255, is **DENIED** and **DISMISSED**.

IT IS FURTHER ORDERED that a certificate of appealability, pursuant to 28 U.S.C. § 2253, is **NOT GRANTED** and that the Clerk of the Court shall mark this case as **CLOSED**.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, U.S.D.J.